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The Honorable J. Kelley Arnold

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

RICHARD NELSON)
Plaintiff,)
vs.)
BNSF RAILWAY COMPANY, a Delaware)
Corporation,)
Defendant.)
Case No. 08-5276JKA
STIPULATION AND ORDER TO
ADJUST DEADLINES
NOTE ON MOTION CALENDAR:
February 2, 2009

Plaintiff Richard Nelson and defendant BNSF Railway Company respectfully stipulate and request this Court enter an Order adjusting the deadlines for expert disclosures, discovery cutoff, and deadline to file dispositive motions as specified below.

BACKGROUND

The Court has ordered completion of discovery in this case by March 8, 2009. *See* Dkt. 15 (*Scheduling Order*, dated September 17, 2008) (“Scheduling Order”). That March 8th discovery deadline falls approximately one month before the parties’ expert disclosures are due.

(April 7, 2009) and two months before the parties' expert rebuttal disclosures are due (May 7, 2009). Similarly, the deadline to file dispositive motions falls on the same date primary expert reports are due (April 7, 2009), and approximately 30 days *before* rebuttal expert disclosures are due. To "secure the just, speedy, and inexpensive determination" of this case as required by Fed. R. Civ. Pro. 1, Nelson and BNSF stipulate and respectfully request that the deadlines for disclosure of expert and rebuttal witnesses, discovery cutoff, and filing dispositive motions be adjusted as follows:

Event	Current schedule	Proposed schedule
Disclosure of Expert Witnesses	April 7, 2009 (per CR 26(a)(2)) (90 days before trial)	March 10, 2009 (118 days before trial)
Disclosure of Rebuttal Witnesses	May 7, 2009 (per CR 26(a)(2)) (60 days before trial)	March 31, 2009 (97 days before trial)
Discovery Cut-off	March 8, 2009 (120 days before trial)	April 30, 2009 (67 days before trial)
Last Date to File Dispositive Motions	April 7, 2009 (90 days before trial)	May 7, 2009 (60 days before trial)
Trial	July 6, 2009	July 6, 2009

ARGUMENT

The Federal Rules of Civil Procedure require a party to make its expert disclosure(s) "at the times and in the sequence that the court orders." Fed.R.Civ.Pro. 26(a)(2)(C). The Western District's Local Civil Rules provide that although 120 days before trial is the typical baseline for discovery cutoff, the court may adjust that date. *See* CR 16(f). Similarly, 90 days before trial is the standard deadline to file dispositive motions "unless otherwise ordered by the court." CR 16(g). A party may request that the court adjust scheduling deadlines pursuant to Fed.R.Civ.Pro. 6(b), which states that "the court may, for good cause, extend the time" if "a request is made, before the original time . . . expires. . . ."

1 Both parties believe good cause exists to schedule the expert disclosures prior to the
2 discovery cutoff and last date to file dispositive motions. First, it would be unfairly prejudicial to
3 force either party to depose the other party's expert(s) before the deponent produces his or her
4 expert report. For all intents and purposes, the deponent could simply refuse to analyze the
5 information or render an opinion until after the discovery deadline passes. As a result, the parties
6 will not have an opportunity to meaningfully depose their respective experts prior to trial.
7 Second, the parties will not be able to file dispositive motions based on those expert disclosures.
8 Finally, the parties would be potentially required to offer premature or incomplete opinions or
9 responses during the course of regularly-conducted discovery.

10
11 For those reasons, BNSF and Nelson respectfully request the court adjust the Scheduling
12 Order: Disclosure of Expert Witnesses on March 10, 2009; Disclosure of Rebuttal Witnesses on
13 March 31, 2009; Date for Completion of Discovery on April 30, 2009; and Last Date to File
14 Dispositive Motions on May 7, 2009.

15
16 DATED this 2nd day of February, 2009.

17 By /s/ Kelsey Endres
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25 -and-

26 By /s/ Fredric Bremseth
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Attorney for Plaintiff RICHARD NELSON

ORDER

IT IS SO ORDERED.

DATED this 3rd day of February, 2009.

/s/ J. Kelley Arnold

Honorable J. Kelley Arnold
United States Magistrate Judge

Presented by:

By /s/ Kelsey Endres

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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s/Kristen Bromenshenkel
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**STIPULATION AND
ORDER TO ADJUST DEADLINES - 5**

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